IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19/07/2004

CORAM

THE HON'BLE MR. JUSTICE V. KANAGARAJ
and
THE HON'BLE MR. JUSTICE S. ASHOK KUMAR

Habeas Corpus Petition No.320 of 2004

J.Mahalingam .. Petitioner

-Vs-

1. State, rep. by its
Secretary to Government,
Prohibition & Excise
Department,
For St. George,
Chennai - 9.

2. The District Magistrate,
and District Collector,
Nagapattinam District. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for the relief as stated therein.

For petitioner : No appearance

For respondents : Mr. Abudu Kumar Rajarathinam
Government Advocate (Crl. side)

:O R D E R

(Order of the Court was delivered by V. KANAGARAJ,J.)

The brother of the detenu is the petitioner herein. He has come forward to file the above petition praying to issue a Writ of Habeas Corpus, calling for the records relating to the order in COC.13/2004 dated 26.2.2004 passed by the second respondent herein, quash the same as illegal and further direct the respondents to produce the detenu J. Ravi, S/o. Jeganathan, TPDA No.4144, who is now confined in the Central Prison, Trichirappalli, before this Court and set him at liberty forthwith.

2. The detenu has been detained on the ground that he was a Bootlegger, under the relevant provisions of Tamil Nadu Act 14 of 1982.

3. Heard Mr. Abudu Kumar Rajarathinam, learned government advocate on the criminal side with no representation made on the part of the petitioner.

4. On a perusal of the records, it comes to be noted by this Court that in the ground case against the detenu in Mayiladuthurai Prohibition Enforcement Wing Crime No.309/2004 has been registered under Sections 4(1)(aaa) r/w.4(1-A) of the TNP Act 1937, wherein in the remand order, it is noted by the learned Magistrate that the accused was produced and no complaint of ill-treatment; 'no prima facie case under Section 4(1-A) TNP Act and therefore, remanded only under Section 4(1)(aaa) TNP Act till 27.2.2004', thereby making it very clear that in spite of no case having been made out against the detenu under Section 4(1-A) TNP Act in the said case at the time of remand, still, on account of non-application of mind, the detaining authority, has stated in the relevant paragraphs, and has proceeded on the assumption that the detenu has been remanded even under Section 4(1-A) of the TNP Act, 1937. Therefore, it is a clear-cut case for non-application of mind at the time of passing of the detention order, as a result of which, the detention order definitely gets vitiated in law, and in these circumstances, this Court is left with no choice but to quash the detention order passed by the second respondent herein.

5. This Court's attention is also drawn to an earlier order passed by a Division Bench of this Court, wherein the Division Bench has decided a similar question involved in H.C.P. No.1026 of 2003 dated 19.11.2003 and it is relevant to extract the operative portion of the order, which is extracted hereunder :
"Learned counsel for the petitioner contends that the order of detention is vitiated by non- application of mind, in that, the order of detention proceeds as if the detenu has been remanded for all the offences for which the crime has been registered while the remand order reflects that the remand has been made only in respect of the offences under Sections 4(1)(aaa) and 4(a)(i) of the Tamilnadu Prohibition Act. The detaining authority should have called for a report in this respect. At the time of remand, Section 4(1-A) was deleted by the Magistrate. As what has been seized under the mahazar has not been produced before the Court, the Magistrate declined to order remand for the offences under Section 4(1-A). Therefore, there is non-application of mind. It is pointed out that the detaining authority should have called for a report in this respect and without calling for a report, the order of detention has been passed as if the detenu has committed all the offences as has been registered against him in the first information report. This renders the detention illegal."

6. Falling in line with the above order of the Division Bench, since the present case is on similar set of facts and circumstances, this Court has to pass its order in the following manner :-

In result,
(i) the above Habeas Corpus Petition is allowed;

(ii) the detention order dated 26.2.2004 made in COC.13/2004

by the second respondent herein is quashed;

(iii) the detenu, viz., J. Ravi, S/o. Jeganathan, is directed to be set at liberty forthwith unless his detention is required in any other case.

Index:Yes
Internet:Yes

Gs.

To
1. The Secretary to Government of Tamil Nadu,
Prohibition & Excise Department,
Fort St. George, Chennai - 9.

2. The District Magistrate and District Collector,
Nagapattinam District.